

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**WILLIAM DAVID SMITH**

**Plaintiff,**

**vs.**

**ESA TRANSPORTATION and  
EDGAR IVAN TORRES**

**Defendants.**

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**CIVIL ACTION NO. 5:15-cv-703  
JURY**

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**DEFENDANTS ESA TRANSPORTATION AND EDGAR IVAN TORRES'  
NOTICE OF REMOVAL**

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Pursuant to 28 U.S.C. § 1441, Defendants ESA Transportation and Edgar Ivan Torres (collectively "Defendants") hereby remove to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Tyson sets forth the following "short and plain statement of the grounds for removal."

**A. THE REMOVED CASE**

1. The removed case is a civil action first filed with the 37<sup>th</sup> Judicial District Court of Bexar County, Texas, on July 22, 2015, styled *William David Smith vs. ESA Transportation and Edgar Ivan Torres*, Cause No. 2015-CI-11956. The case arises from a motor vehicle accident between a tractor-trailer driven by Edgar Ivan Torres ("Torres") and a vehicle driven by Plaintiff William David Smith ("Plaintiff") that occurred on or about July 9, 2015 in San Antonio, Texas.

**B. DOCUMENTS FROM REMOVED ACTION**

2. Pursuant to Federal Rule of Civil Procedure 81 and 28 U.S.C. 1446(a), Defendants attach the following documents to this Notice of Removal:

- (a) A list of all parties in the case, their party type and current status;
- (b) A civil cover sheet and copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

These documents are attached to this Notice of Removal as *Exhibit B*.

**C. REMOVAL IS TIMELY**

3. Plaintiff filed the present civil suit against Defendants in the 37<sup>th</sup> Judicial District Court of Bexar County, Texas ("the state court"), on July 22, 2015. In the Original Petition, Plaintiff asserts negligence and respondeat superior causes of action against Defendants, and asserts that he is seeking monetary relief in excess of \$200,000 but less than \$1,000,000 from Defendants.

**D. VENUE IS PROPER**

4. The United States District Court for the Western District of Texas is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 37th Judicial District Court of Bexar County, Texas, is located within the jurisdiction of the United States District Court for the Western District of Texas.

**E. DIVERSITY OF CITIZENSHIP EXISTS**

5. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

6. Plaintiff is a resident of New Braunfels, Comal County, Texas.<sup>1</sup>

7. Defendant ESA Transportation is a foreign company with its office and primary place of business located in San Diego, California. Pursuant to 28 U.S.C. § 1332(c)(1), ESA Transportation is not incorporated in the State of Texas, does not maintain a place of business in the State of Texas, and is not a citizen of the State of Texas.<sup>2</sup>

8. Defendant Edgar Ivan Torres is an individual residing in San Marcos, California, and is not a citizen of the State of Texas.<sup>3</sup>

9. Because Plaintiff is a citizen and resident of the State of Texas and no Defendant is a resident or citizen of the State of Texas, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

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<sup>1</sup> See, Plaintiff's Original Petition at ¶ 3, a true and correct copy of which is produced herein.

<sup>2</sup> See, Plaintiff's Original Petition at ¶ 5.

<sup>3</sup> See, Plaintiff's Original Petition at ¶ 4.

**F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

10. In the Original Petition, Plaintiff alleges that he is seeking relief in excess of \$200,000 but less than \$1,000,000 from Defendants.<sup>4</sup>

11. Based on the aforementioned facts, the current state court action may be removed to this Court by Defendants in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy will exceed \$75,000, exclusive of interest and costs.

**G. FILING OF REMOVAL PAPERS**

12. Pursuant to 28 U.S.C. § 1446(d), Defendants are providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 37<sup>th</sup> Judicial District Court of Bexar County, Texas, in which this action was originally commenced.

**H. CONCLUSION**

13. Defendants ESA Transportation and Edgar Ivan Torres hereby remove the above-captioned action from the 37th Judicial District Court of Bexar County, Texas, and requests that further proceedings be conducted in the United States District Court for the Western District of Texas, San Antonio Division, as provided by law.

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<sup>4</sup> See, Plaintiff's Original Petition at ¶ 20.

Respectfully submitted,

**KANE RUSSELL COLEMAN & LOGAN PC**

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**ATTORNEYS FOR DEFENDANTS  
ESA TRANSPORTATION AND  
EDGAR IVAN TORRES**

**CERTIFICATE OF SERVICE**

This is to certify that on this the 18th day of August, 2015, a true and correct copy of the foregoing instrument is being served on all counsel of record, as follows:

**BY ECF AND CERTIFIED MAIL**

Paula Wyatt  
Wyatt W Law Firm  
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s/ Zach T. Mayer  
Zach T. Mayer